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SUBJECT: EU AGREES ON ASYLUM PROCEDURES DIRECTIVE

REF: (A) USEU BRUSSELS 1448;

(B) USEU BRUSSELS 742;

(C) USEU BRUSSELS 309

SUMMARY

1. The EU Justice and Home Affairs Council on April 29 reached political agreement on a draft Directive imposing minimum standards on procedures in Member States for granting and withdrawing refugee status. Coupled with the formal adoption of the Asylum Qualification Directive on the same day, the deal sets out the bases of a Common EU Asylum System as envisaged under the EU Tampere program and in keeping with the target of the Amsterdam Treaty. UNHCR, however, has raised concerns that the new EU Directive "may lead in practice to breaches of international refugee law." Full text of the Council conclusions has been transmitted to EUR/ERA. Justice issues discussed at the meeting will be reported SEPTEL. END SUMMARY.

"MINIMUM STANDARDS" DIRECTIVE

2. The Irish Presidency at the April 29 meeting of EU Justice and Home Affairs (JHA) Ministers in Luxembourg succeeded in its goal to record political agreement on the Asylum Procedures Directive that lays down minimum standards on procedures in Member States for the grant and withdrawal of refugee status. The accord, which remains subject to parliamentary scrutiny reservations, ends three and a half years of negotiations in which Germany and the UK held major reservations at various stages. It enables the EU to complete the first stage of a Common European Asylum System within the five-year deadline (May 1, 2004) set by the 1999 Tampere European Council and the Amsterdam Treaty. The Directive is the final building block of this first stage, described by EU officials as "minimum standards legislation."

3. The Directive deals with matters such as right of access to an asylum procedure, requirements for the examination of asylum applications and guarantees for applicants (interviews, consultation with UNHCR, access to legal aid, etc.), obligations for applicants to cooperate with the asylum determination process and nature of outcome to be expected where an applicant fails to cooperate. The Irish Presidency said the Directive provided for "an effective remedy/appeal against negative first instance decisions in asylum applications and a legal framework for the application of the safe country of origin and safe third country concepts in EU law."

4. Final difficulties related to the potential use of lists of countries to keep asylum seekers out of the EU territory or to expedite handling of asylum applications (REFTEL). Member States agreed to establish a minimum list of safe countries of origin, whereby asylum applicants coming from those countries will have their application denied by an accelerated procedure. However, in order to secure the necessary consensus, the Irish Presidency made the text somewhat less detailed than the Commission's original proposal. The Council "undertook to conduct during the coming months an in-depth assessment of countries that may be included in a minimum common EU list of safe countries of origin to ensure that they fulfill the criteria in the Directive." Taking account of substantive changes with respect to the text on which the European parliament was originally consulted, the Council decided to re-consult before formal adoption.

5. The UNHCR issued a statement expressing "regret"

that the EU missed an opportunity to adopt high standards with regard to asylum. A press communique by UNHCR argued that the new EU Directive "may lead in practice to breaches of international refugee law." The most worrisome provisions of the Directive, it said, relate to "safe third countries" to which asylum seekers may be returned and lack of appeal procedures. JHA Commissioner Vitorino at the final press conference rebutted "NGOs' concerns," saying that the standards agreed in the Directive were consistent with international obligations of the Member States, such as the Refugee Convention and the European Convention on Human Rights. Though he would not deny that the "level of ambition" of the agreed text was lower than the original and amended versions of the Commission proposal, Vitorino stressed that the deal provides for "the same safeguards" for asylum applicants across the EU: comprehensive information about the procedure at the start of the process, access to legal assistance, the right to an interview and a motivated decision in writing by an authority qualified in refugee law.

16. According to the Commission, the Directive will ensure that all negative decisions on asylum applications in the EU are subject to judicial scrutiny. Member States can provide lower safeguards only in three very specific situations defined in the Directive:

- Where an applicant arrives at the border and makes an application which can be considered unfounded within four weeks;
- Where an applicant makes, after a previous procedure, a new application without bringing forward any new relevant facts,
- Where the applicant could have asked for asylum in a third country, which is considered safe by a Decision of the Council because the third country fully respects the Refugee Convention and the European Convention of Human Rights.

QUALIFICATION DIRECTIVE

17. The Council also formally adopted without discussion the Directive on minimum standards for the qualification and status of third country national or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (REFTEL and previous). The March 30 JHA Council had reached Agreement on the text subject to a parliamentary scrutiny reservation by the Dutch delegation.

A COMMON EU ASYLUM SYSTEM

18. Mc Dowell and Vitorino said the deal on the two Directives, together with the other legislative instruments on asylum already adopted by the Council, would guarantee a minimum level of protection and procedural safeguards in all Member States for those who are genuinely in need of international protection, while preventing abuses of asylum applications that undermine the credibility of the system. Vitorino said: This "effectively means that the first phase of the Common European Asylum System has now been established. Both Directives will significantly contribute to a common approach across all 25 EU Member States. The Directives will promote mutual confidence in Member States' asylum systems in the EU, where only one Member State will be responsible for a particular application."

OTHER BUSINESS

19. The Commission briefly updated the Council on the state of play concerning visa reciprocity and its recent proposal requesting a Council mandate to negotiate with the Russian Federation a visa facilitation agreement.

10. Among other decisions taken without discussion, the Council formally adopted:

- A Directive on the residence permit issued to victims of trafficking in human beings from non-EU countries or to non-EU nationals who have been the subject of an action to facilitate illegal immigration who cooperate with the

competent authorities;

- A Council Directive on the obligation of carriers to communicate passenger data (REF.A);
- A Decision on the organization of joint flights for removals, from the territory of two or more Member States, of non-EU nationals who are subjects of individual removal orders;
- A Regulation concerning the introduction of some new functions for the Schengen Information Systems, including in the fight against terrorism;
- Conclusions on the location, management and financing of the new second generation SIS. Minister Mc Dowell thanked France and Austria for making their respective facilities at Strasbourg (central part of SIS II) and Salzburg (business continuity site) available for the system. The decisions will enable the Commission to have the requisite facilities available for the contractor selected to develop the system, thus ensuring that the timetable for developing SIS II is maintained;
- Decisions amending the Common Schengen Manual to include provision for targeted border controls on accompanied minors and to use a standard forum for refusal of entry;
- A Decision determining the minimum indications to be used on signs at external border crossing points.

COMMENT

11. The fact that the final text of the Procedures Directive does not have "as high a level of ambition" as the Commission originally envisaged reflects both the unanimity requirement and the sensitive character of asylum issues in many EU countries. However, the Directive will contribute to creating a level playing field in the area of asylum in the 25 Member States. Experience will show whether this will enhance mutual confidence in Member States' systems. The deal opens the way to the second stage of the Common European Asylum System and allows further approximation of Member States legislation and practice. Future EU legislation in this area will include co-decision with the European Parliament and allow for qualified-majority voting in the Council.

FOSTER